No. 97-1396

In The

Supreme Court of the United States

October Term, 1997

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA,

Appellants,

v.

MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA,

Appellees,

and

WENDY DUFFY,

Intervenor-Appellee.

On Appeal From The United States District Court For The Northern District Of California

MOTION TO AFFIRM

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QUESTION PRESENTED

WHETHER THE SEVERE PRECLEARANCE PENALTY OF THE VOTING RIGHTS ACT, EXPRESSLY IMPOSED UPON THOSE STATES OR POLITICAL SUBDIVISIONS IDENTIFIED BY THE ACT'S COVERAGE FORMULAE, MAY BE EXTENDED TO RESTRAIN A NON-COVERED STATE WHICH INCLUDES WITHIN ITS BORDERS A COVERED POLITICAL SUBDIVISION.

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MOTION TO AFFIRM

Pursuant to Rule 18.6, Appellee State of California respectfully moves to affirm the order and judgment below on the ground that the questions raised by Appellants are not sufficiently substantial to require additional argument. The Three-Judge District Court's unanimous decision on the merits is based on well-settled principles established by this Court and reflects an accurate interpretation of applicable state and federal law. There is no conflict which requires resolution by this Court.

PROCEDURAL HISTORY OF THE CASE

This case has previously been before this Court on an interim appeal. *Lopez v. Monterey County*, ___ U.S. ___, 117 S.Ct. 340 (1996) (*"Lopez"*). It is a "coverage case," filed under Section 5 of the Voting Rights Act (42 U.S.C. § 1973c), in which Plaintiffs alleged that Monterey County, one of California's 58 counties, failed to obtain required federal preclearance before consolidating seven justice courts and two municipal courts into a single countywide municipal court. Plaintiffs sued only the County, a political subdivision designated as a covered jurisdiction under the Act's coverage formulae. 42 U.S.C. § 1973b(b) *See* 28 C.F.R. Pt. 51, App.; 35 Fed.Reg. 12354 (July 24, 1970); 36 Fed.Reg. (No. 60) 5809 (Mar. 27, 1971). They successfully opposed the County's early motion to join the State as an indispensable party.

In March 1993 the Court ruled that the challenged consolidation ordinances effected election changes, and the County was directed to seek federal preclearance. The

County filed a declaratory judgment action in the District Court for the District of Columbia. However, at the urging of the United States Department of Justice ("USDOJ") and the Plaintiffs (who had intervened),[1] the County dismissed its preclearance action without prejudice and returned with Plaintiffs to the coverage court to seek a permanent, substantive, court-ordered "remedial" election plan. As a result, several years of additional litigation ensued in the coverage court. *Lopez*, 117 S.Ct. at 345-346.

Plaintiffs and the County asked the District Court to impose an election plan which carved the County into race-based "electoral divisions" that were prohibited under State law. The State intervened in defense of its statutes and Constitution, and the Court declined to order Plaintiffs' requested racial divisions; instead, it enjoined municipal court elections and again directed the County to seek federal preclearance. Eventually, however, in December 1994, the Court ordered an "emergency" interim election, directing that the County be divided into four race-based divisions (three of which contained Latino majorities) for purposes of this election.

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[1] During oral argument of the interim appeal, Plaintiffs' counsel explained that Plaintiffs and USDOJ influenced the County to drop its court-ordered preclearance effort: "[S]ubsequent to that filing, *we intervened, and as a result of that intervention, as a result of discussion with the Department of Justice*, Monterey County decided that it could not meet its burden of demonstrating that several of these county ordinances did not have a retrogressive effect." Official Transcript, Oct. 8, 1996 Argument, pp. 7-8; emphasis added.

In November 1995 the District Court recognized that this Court's decision in *Miller v. Johnson*, 515 U.S. ___, 115 S.Ct. 2475 (1995) cast "substantial doubt" on the constitutionality of race-based electoral divisions in this context. Noting that a return to the 1968 judicial election system – the status quo – was not feasible, the Court directed a one-time countywide judicial election. The Court further ruled that the State should be joined as an indispensable party and permitted to move to dismiss Plaintiffs' action:

> If the State believes that the County is only administering a State statute and that the failure to preclear the consolidation ordinances is of no significance, it can seek to lift the injunction and have this Section 5 litigation dismissed.

Nov. 1, 1995, Order at 5.

Plaintiffs appealed from the interim order directing a countywide election. During oral argument of that appeal, Plaintiffs admitted for the first time that no substantive harm under the VRA has been established in this coverage action. No court has yet determined whether the County's pre-1983 consolidations harmed, or enhanced, or had any effect whatsoever upon, Latino voting strength.[2]

On November 6, 1996, this Court filed its opinion in *Lopez*, 117 S.Ct. 340. The Court reemphasized the narrowly restricted jurisdiction and the limited remedial

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[2] QUESTION: And there has never been a determination that there is a substantive violation of Section 5 of the Voting Rights Act?

MR. AVILA: That is correct.

* * * * * * * *

authority of district courts in Section 5 coverage actions, noting that a coverage court may not consider, much less purport to remedy, "retrogression" or any other substantive violation(s) of the Act. *Id.* at 348-349. The Court's remand order returned Plaintiffs' action to essentially the same status that obtained in 1993, leaving further elections enjoined and directing the County promptly to submit its consolidation ordinances for federal preclearance. The Court also expressly recognized that, on remand, the State would be permitted to raise potentially dispositive threshold issues, including arguments that: (1) after the County promulgated its challenged consolidation ordinances between 1972 and 1983, "intervening changes in California law . . . transformed the County's judicial election scheme into a state plan . . . ."; and (2) "the County is not administering County consolidation ordinances in conducting municipal court elections, but is merely implementing California law, for which § 5 preclearance is not needed." *Lopez*, 117 S.Ct. at 340, 347.[3]

> QUESTION: [The County] dropped the suit, and so that leaves us in a posture, as of now, there's been no finding of a substantive violation of section 5.
>
> MR. AVILA: That is correct.

Official Transcript, Oct. 8, 1996 Argument, pp. 7-8.

[3] Appellants and the United States argue that *Lopez* should be given *res judicata* effect as to issues which the Court *expressly declined to address*. Although this Court concluded that the County exercised discretion *when it passed its historic consolidation ordinances*, the Court never ruled on the *current* situation or the effect of intervening State law, specifically reserving those questions for the District Court on remand. *Id.* at 347.

Plaintiffs filed a First Amended Complaint on October 24, 1996 (J.S.App. 83), and the State filed its Motion to Dismiss on November 25, 1996. The State also moved to vacate an order extending the terms of judges elected under the Court's December 1994 race-based division plan. On November 17, 1997, the District Court issued a tentative order granting the State's motions, and on December 12, 1997, the County notified the Court by letter that it had no disagreement with the tentative disposition of the State's motion to dismiss.

On December 19, 1997, the Court issued its final order and judgment, granting the State's motions to dismiss and to vacate. The Court held that: (1) irrespective of historical County ordinances, the present countywide municipal court is a product of intervening, superseding state law, and of a precleared 1983 ordinance; and (2) the State, which has never been designated a covered jurisdiction under the Act's coverage formulae, is not subject to the Section 5 preclearance penalty. J.S.App. 1-12. Plaintiffs' notice of appeal followed. J.S.App. 13.

STATEMENT OF MATERIAL FACTS

Under the Constitution and laws of California, the State has plenary power over its judicial system of trial and appellate courts. *See generally* Cal. Const., Art. VI, and § 5; Cal. Gov. Code, §§ 68070, et seq. [general administrative provisions]; 71001, et seq. [Municipal Courts]; 69502, et seq. [Superior Courts]; 69100, et seq. [Courts of Appeal]; and 68801, et seq. [Supreme Court]. *And see, e.g., County of Sonoma v. Workers' Comp. Appeals Bd.*, 222

Cal.App.3d 1133, 1137 and n. 1 (1990). The Legislature has specific authority to divide counties into municipal court districts (Cal. Const., Art. VI, § 5(a)), and to "provide for the organization and prescribe the jurisdiction of municipal courts." Cal. Const., Art. VI, § 5(c).

In addition, the Constitution establishes the State's Judicial Council, charged with monitoring the condition of judicial business statewide, making recommendations, and "perform[ing] other functions prescribed by statute." Cal. Const., Art. VI, § 6. *See also* Cal. Gov. Code, §§ 68500, et seq. One such statutory function is to recommend consolidation or enlargement of judicial districts, where appropriate, to promote administrative economies. Cal. Gov. Code, § 71042.

Pursuant to this authority, the Judicial Council undertook an evaluation of the County's then-existing justice courts and municipal courts in 1972. The State's recommendation, reflected in a letter from the Chief Justice of California, was that these lower courts should be merged into a *single consolidated countywide municipal court* to further important state policies:

> It is recommended by the Judicial Council that the lower courts in Monterey County be consolidated into a county-wide municipal court district with the new court sitting full time in Salinas and Monterey and holding sessions in King City as needed.

State's Appendix ("S.A.") 1. The report suggested that justice courts be consolidated "[w]henever a judicial

vacancy occurs in a justice court." *Id.* at 2.[4] The County thereafter followed these recommendations in increments, as judicial vacancies occurred and opportunities arose to merge courts.[5]

In 1979, the State exercised its plenary power, amending California Government Code section 73560 to prescribe the configuration and name of a single municipal court in Monterey County:

> There is in the County of Monterey, on and after the effective date of this section, a single municipal court district which embraces the former Salinas Judicial District, Monterey Peninsula Judicial District and North Monterey County Judicial District. This article applies to the municipal court established within the judicial district which shall be known as the Monterey County Municipal Court.

Cal. Stats. 1979, Ch. 694, § 1. *See also Lopez*, 117 S.Ct. at 344, footnote [*]; Order, J.S.App. 6. In 1983, the State further amended its statutes to permit consolidation of the County's remaining two justice courts with this State-defined municipal court; it authorized an increase in the

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[4] This recommended consolidation was consistent with a marked statewide reduction in the number of inferior trial courts. *See Comment, Trial Court Consolidation in California*, 21 UCLA L.Rev. 1081 (1974). *See also, e.g., 1991 Annual Report of Judicial Council to Governor and Legislature*, p. 104, Table 5 [S.A. 27].

[5] *See Lopez*, 117 S.Ct. at 344: "Between 1972 and 1983, the County adopted six ordinances, which ultimately merged the seven justice court districts and two municipal court districts into a single, county-wide municipal court . . . ." *And see* Cal. Gov. Code, § 71040.

number of judges contingent upon such consolidation. *See* Cal. Gov. Code, § 73562; Cal. Stats. 1983, ch. 1249, § 3. The County responded by passing Ordinance No. 2930, resulting in a single countywide court. That 1983 change – including the County's ordinance – received administrative preclearance from USDOJ. Order, J.S.App. 7; *see also Lopez*, 117 S.Ct. at 345.[6] And in 1994, California's voters adopted Proposition 191, thereby abolishing all justice courts throughout the State. Cal. Const., Art. VI, §§ 1, 5(b).[7]

ARGUMENT: REASONS TO AFFIRM

I. THE CURRENT COUNTYWIDE COURT IS DICTATED BY STATE LAW AND PRECLEARED ORDINANCE

By the time Plaintiffs filed their Section 5 coverage action in late 1991, the object of their challenge – historic consolidation ordinances adopted between 1972 and 1983

[6] USDOJ concedes that it precleared Ordinance 2930. *See* Jan. 30, 1997 U.S. Amicus Brief in Response to State's Motions, at p. 7, n. 5; May 1996 Brief for the U.S. as Amicus in the interim appeal, Case No. 95-1201, at p. 15, n. 10. *And see* March 1998 U.S. Amicus Brief in this appeal ("U.S. Brief"), at 3.

[7] Similarly, in the upcoming statewide primary election on June 2, 1998, State voters will decide whether to adopt Proposition 220. If adopted, Proposition 220 would, among other things, "permit[] superior and municipal courts within a county to consolidate their operations if approved by a majority of the superior court judges and a majority of municipal court judges in the county." *Existing municipal courts in such a county "would be abolished . . . ."* Cal. Primary Election Ballot Pamphlet, Analysis of Proposition 220, S.A. 39; emphasis added.

– had become immaterial. Rather, as the District Court correctly found, Monterey's countywide municipal court was by then a product of *intervening state law*: "Superseding changes in California law have converted the County's judicial election scheme into a state plan . . . ." Order, J.S.App. 6. The superseding effect of state law was underscored in 1994, when justice courts – which constituted seven of the County's nine inferior courts in 1968 (*Lopez*, 117 S.Ct. at 343) – were altogether eliminated from the State's judicial system by constitutional amendment.[8]

The Court's finding is solidly anchored in law and fact. As noted above, the California Constitution vests in the Legislature the power to divide counties into municipal court districts "as provided by statute" and to direct their organization. Cal. Const., Art. VI, §§ 5(a),(c); Order, J.S.App. 6. In 1979, the Legislature exercised this power by prescribing, in clear terms, a single municipal court for the County "on and after the effective date of this section . . . ." Cal. Gov. Code, § 73560; Cal. Stats. 1979, Ch. 694, § 1.

Prior to this 1979 State directive, to be sure, the County itself had passed various ordinances to consolidate and rename inferior courts, pursuant to authority delegated under California Government Code 71040, and had implemented these changes without federal preclearance. *See* Order, J.S.App. 2; *Lopez*, 117 S.Ct. at

[8] In asserting that, absent the 1983 consolidation, Proposition 191 would simply have changed existing justice courts into independent municipal courts (U.S. Brief at 18, n. 8), the United States forgets the State's constitutional restrictions on the size and configuration of municipal courts. *See Lopez*, 117 S.Ct. at 344.

344-345. But the Legislature's statutory establishment of a new municipal court in 1979 plainly superseded any prior alterations made by the County, rendering those changes, and any related preclearance issues, entirely moot. *See, e.g., City of Monroe, et al. v. United States*, ___ U.S. ___, 118 S.Ct. 400, 401-402 (1997) [local covered jurisdiction's obligation to preclear changes in local charter *ceases* after enactment of superseding and controlling statewide legislation]; *Young, et al. v. Fordice, et al.*, ___ U.S. ___, 117 S.Ct. 1228 (1997) [covered jurisdiction not required to seek preclearance of change imposed by superior power, except to the extent that covered jurisdiction exercises discretion in implementation].

The Legislature's 1979 statutory amendment " '*repeal[ed] the existing provisions* relative to the municipal court in Monterey County *and enact[ed] new provisions establishing a single judicial district for the municipal court* in Monterey County . . . .' " Order, J.S.App. 6, quoting official Digest (AB 628); emphasis added. *See also* J.S.App. 32. The supremacy of the State's later enactment is quite clear. Cal. Const., Art. VI, § 5 [Legislature's authority over municipal courts]; Art. XI, § 1(a) [counties are "legal subdivisions of the State"]; Art. XI, § 1(b) ["Legislature shall provide for county powers"]. *And see, e.g.*, Cal. Gov. Code § 71001 [prior laws relating to municipal courts remain in effect "until altered by the Legislature"]. "Any local law that directly conflicts with state legislation is void." *Galvan v. Superior Court*, 70 Cal.2d 851, 856 (1969); *accord, Building Industry Assn. v. City of Livermore*, 45 Cal.App.4th 719, 724 (1996); *Cedar Shake & Shingle Bur. v. City of Los Angeles*, 997 F.2d 620, 623 (9th Cir. 1993).[9]

In 1983, the Legislature further amended state law to permit the County to merge its two remaining justice courts into the municipal court. Cal. Gov. Code, § 73562; Cal. Stats. 1983, ch. 1249, § 3. Both the State's 1983 amendment and the County's corresponding 1983 consolidation ordinance received federal preclearance; hence, there are no remaining Section 5 issues associated with that final step in the unification process. *See* Order, J.S.App. 6-7; fn. 6, *ante*. Further, the subsequent elimination *by the State* of all justice courts in every county, through adoption of Proposition 191 in 1994, would have resulted in a countywide municipal court in Monterey County even in the absence of the County's 1983 ordinance. J.S.App. 8; Cal. Const., Art. VI, § 5. In either event, as the District Court correctly observed: "The County, as a subordinate jurisdiction of the State, lacks the discretion to choose a voting plan that does not involve a countywide district." J.S.App. 9.

There is thus abundant support for the District Court's determinations that: (a) the countywide municipal court is presently, and was in 1991, a state plan; and (b) to the extent that the County's 1983 consolidation

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[9] The County agrees that Cal. Gov. Code § 73560, which now prescribes a single countywide municipal court district, "does not allow Monterey County to modify and consolidate municipal or justice court districts." County Ans. to Amended Comp., p. 3, ¶ 5. S.A. 30-31. The County also acknowledges that it "is a political subdivision of the State," and that State statutes "are binding and enforceable against [it]." *Id.* at p. 4, ¶ 15. S.A. 33.

ordinance changed the municipal court from its 1979 configuration to its present countywide status, that ordinance was precleared by USDOJ. These findings must be affirmed on appeal, and present no substantial questions requiring this Court's review or resolution.

II. THE STATE OF CALIFORNIA IS NOT SUBJECT TO SECTION 5's PRECLEARANCE PENALTY

This appeal rests on Appellants' claim that States never designated as presumptively suspect "covered" jurisdictions under the VRA must nonetheless obtain federal permission before implementing their sovereign legislative and administrative acts whenever one or more *political subdivisions* within the States – here, 4 of California's 58 counties – have been separately identified under Congress' Section 4(b) coverage formulae. 42 U.S.C. § 1973b(b). However, Appellants' proposed approach, which would extend the preclearance penalty far beyond the Act's targeted jurisdictions, lacks any support in case law, in the plain language of Sections 4 and 5, or in the policies underlying the preclearance penalty. The claim was properly rejected by the District Court. J.S.App. 4-5 and n. 1.

A. The State is Not a Covered Jurisdiction

The State is not a designated covered jurisdiction; it has never been identified, under any coverage formula, as a covered "State or political subdivision" subject to Section 5's preclearance penalties. *See* 28 C.F.R., App. to Part 51. The District Court's decision is, in this respect, undisputed and unimpeachable. J.S.App. 5 and n. 1.

B. Under the Act's Plain Language, Application of the Preclearance Penalty is Restricted to Statutorily Designated States or Political Subdivisions

1. Section 5 Expressly Incorporates the Act's Coverage Formulae

Congress has provided specific formulae in Section 4(b) to determine which governmental bodies are subject to the preclearance penalty. According to the Act's plain language, federal preclearance is required *only as to voting changes initiated by an identified covered jurisdiction* – i.e., a "State or political subdivision" designated by USDOJ and the Census Bureau as coming within the statutory coverage formulae. Section 5's opening sentence defines the reach of that preclearance requirement as follows:

> Whenever *a State or political subdivision . . . with respect to which the prohibitions set forth in section 1973b(a) [Section 4(a)] of this title based upon determinations made under the second sentence of section 1973b(b) [Section 4(b)] of this title are in effect* shall enact or seek to administer any [voting change] . . . *such State or subdivision* may institute an action . . . [for preclearance] . . . : *Provided*, That such [voting change] . . . may be enforced without such proceeding if [it] . . . has been submitted by the . . . *State or political subdivision* to the Attorney General and the Attorney General has not interposed an objection . . . .

Emphasis added. It follows, of course, that *unless* a State or subdivision has been determined to be a covered jurisdiction under Section 4(b), or is a subordinate subdivision

or "instrumentality" of such a covered jurisdiction,[10] it remains free to "enact" or to "seek to administer" voting changes without prior permission from USDOJ or the federal courts. *See* J.S.App. 4-5.

2. The Phrase "Seek to Administer" Does Not Support Appellants' Theory

Appellants ignore Section 5's incorporation of these specific coverage formulae, and instead focus on Congress' inclusion of the phrase "seek to administer." Appellants argue that these three words can *only* refer to a subdivision's implementation of State-dictated programs; otherwise, they contend, any distinction between the term "enacts" and the term "seeks to administer" would be "rendered meaningless." J.S. 13.

Appellants' argument is readily refuted, however; it ignores the fundamental structure and function of governmental bodies, and it defies common sense. Governments – including covered States and covered local subdivisions – have at least two and often three functions or branches: executive, legislative, and perhaps judicial. Voting changes might be effected through any of these channels, and particularly through formal legislation or rulemaking ("enact") and through discretionary executive directives ("seek to administer"). Congress' use of

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[10] *See United States v. Board of Commissioners of Sheffield, Alabama*, 435 U.S. 110 (1978) (*"Sheffield"*) and *City of Rome v. United States*, 446 U.S. 156 (1980), discussed *infra*.

both terms merely reflects the view that *a covered jurisdiction* may not initiate *either* kind of change without preclearance. *See, e.g., NAACP v. Hampton County Election Comm'n.*, 470 U.S. 166, 178 (1985) [preclearance requirement "reaches informal as well as formal changes"].[11]

If Congress had not included both terms, then a host of voting changes might have escaped the preclearance penalty because they did not flow from formal legislative enactments. *See, e.g., Morse v. Republican Party of Virginia*, ___ U.S. ___, 116 S.Ct. 1186 (1996) [political party imposing registration fee]; *Perkins v. Matthews*, 400 U.S. 379 (1971) [changing locations of polling places]. Thus, the term "seeks to administer" plays an important substantive role in broadly describing changes *initiated by a covered jurisdiction*. Under the District Court's common-sense construction, neither the term "enact" nor the term "seek to administer" is superfluous. Indeed, the very words "seek to" imply that the covered jurisdiction *must have some choice or discretion* in initiating the administrative change – discretion that does not exist when, as here, the change is dictated by a superior jurisdiction.

The District Court's analysis finds powerful support in several of this Court's decisions. In *Young v. Fordice*,

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[11] The District Court's interpretation also finds support in Appellant's quotations from Webster's New World Dictionary, distinguishing "enact" (to make into law) from "administer" (to manage or direct). J.S. 13. A covered jurisdiction might use either process to *initiate* changes. *See Young*, 117 S.Ct. 1228, 1236; *Foreman v. Dallas County, Tex.*, ___ U.S. ___, 117 S.Ct. 2357, 2358 (1997); *NAACP v. Hampton Co.*, 470 U.S. 166, 178.

117 S.Ct. at 1236, this Court described "administrative practices" as "practices that are not purely ministerial, but *reflect the exercise of policy choice and discretion* by [the covered jurisdiction's] officials." Emphasis added. *See also Foreman*, 117 S.Ct. at 2357 [although state statute precleared, county's exercise of discretion thereunder must also be precleared]; *NAACP v. Hampton Co.*, 470 U.S. 166, 178. Indeed, *Young's* holding – that a covered jurisdiction is not required to preclear voting changes imposed by superior powers unless local discretion is retained and exercised – appears fully to answer the question presented in this appeal. *City of Monroe*, 118 S.Ct. 400, also strongly supports the judgment below. There, a covered local jurisdiction was no longer required to seek preclearance of prior changes in its local charter because those changes were superseded by controlling statewide legislation.[12]

As these cases show, it is the actions of covered governmental bodies that are restricted by the preclearance penalty. If a local covered jurisdiction did not initiate or direct a particular condition and is powerless to modify it, then the question must be whether (a) the superior jurisdiction that imposed the condition is itself a covered jurisdiction (*e.g., City of Monroe*), in which case *it*

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[12] *Perkins v. Matthews*, 400 U.S. at 394-395, is also entirely consistent with the District Court's decision here. In *Perkins*, the local jurisdiction *chose to disregard* a 1962 (pre-coverage) state law requiring at-large elections, and instead conducted elections by ward in 1965. Accordingly, that local jurisdiction's later change to at-large elections, in 1969, was found to be in the nature of a *local discretionary change* rather than a state-imposed pre-Act change.

must obtain preclearance, or (b) the superior jurisdiction is not covered (*e.g., Young*), in which case preclearance is unnecessary.

3. Appellants Lack The Clear Statutory Language Required to Support Their Theory

Appellants have an imposing burden, as this Court has often observed: courts may not interpret a federal statute to reduce the States' sovereign powers, as Appellants urge here, unless Congress has included "unmistakably clear" language to that effect in the statute itself. Courts are flatly prohibited from *assuming* or *inferring* any such intent by Congress:

> [I]f Congress intends to alter the "usual constitutional balance between the States and the Federal Government," it must make its intention to do so "unmistakably clear in the language of the statute." *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 [1985] . . . ; *see also Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 99 [1984] . . . Congress should make its intention "clear and manifest" if it intends to pre-empt the historic powers of the States, *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 [1947]. . . .

Gregory v. Ashcroft, 501 U.S. 452, 460-461 (1991), quoting from *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 65 (1989). *And see Reno v. Bossier Parish School Board, et al.* ("*Bossier Parish*"), ___ U.S. ___, 117 S.Ct. 1491, 1500 (1997) [Court will not assume that Congress would "impose a demonstrably greater burden on the jurisdictions covered by § 5" without clear statement of intent and/or specific amendment to statute]. The purpose of requiring absolute

clarity in statutory language is to guarantee that Congress fully and carefully considered its intrusion into the States' domain, and appreciated the critical ramifications thereof upon interests of federalism:

> In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision. [Citations omitted.]

Gregory, at 461. Here, as their contrived and contorted reading of the phrase "seek to administer" suggests, Appellants cannot point to *any* congressional amendment or clear statutory statement that supports their theory.[13]

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[13] Neither can Appellants provide any non-statutory statements manifesting a clear and unmistakable intention to impose the preclearance penalty upon non-covered States. The only "evidence" Appellants proffer of "congressional intent" is a single statement *by a partisan spokesman*, "Mr. Suitts," during a single day of Senate subcommittee hearings in February 1982, in response to a single question by Senator Hatch, who openly doubted whether a non-covered State's enactments could accurately be included in a tabulation of legislation deemed subject to preclearance. J.S. 17-18. *The witness conceded that he knew of no Supreme Court case holding that non-covered states are subject to the preclearance requirement and that he knew of no case in which that issue had been argued.* Hrgs. by Senate Subcomm. of Comm. on Judiciary, 97th Cong., 2nd Sess., Vol. 1, p. 599 (1983); emphasis added. His testimony was later briefly summarized in a Senate Report. *See* Senate Report No. 97-417, 97th Cong., 2d Sess., at p. 12, n. 32 (May 25, 1982).

Although Appellants portray footnote 32 in a 239-page report as a "clear directive" from Congress, it is nothing of the sort. A careful reading of the footnote in context reveals that it is simply an addendum to the summary of *Mr. Suitts' views*,

4. Because It Severely Intrudes Upon Sovereign Rights, The Preclearance Penalty Must Be Narrowly Construed

The District Court's conclusion, that Section 5 targets "only those enactments by jurisdictions suspected of abridging the right to vote and not those put in force by a non-covered, superior jurisdiction," is also consistent with, if not compelled by, this Court's decisions in *South Carolina v. Katzenbach*, 383 U.S. 301 (1966) and *Briscoe v.*

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explaining the *data compiled by his organization*. And even if that single footnote sentence could, arguendo, fairly be attributed to the Committee rather than a partisan witness, this Court has expressly held, in *Bossier Parish*, 117 S.Ct. at 1500, that such obscure references cannot remotely satisfy the requirement that Congress, if it wishes to "impose a demonstrably greater burden" on States, must do so in a clear statement and/or specific amendment.

A review of matters that *were* discussed in the extensive hearings and debates surrounding the VRA, and in the 239-page Senate Report, underscores this conclusion. *See, e.g.*, Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History*, 40 Washington and Lee L. Rev. 1347 (1983). For example, members of Congress repeatedly alluded to this Court's analysis in *Katzenbach*, and voiced concern that more restrictive "bailout" requirements for covered jurisdictions might render Section 5 unconstitutional. They also discussed at length the question whether to expand the Act's definition of covered jurisdictions. *E.g.*, Boyd & Markman at 1372-1374, 1380-1381, 1385, 1407-1409, 1420. In view of Congress' detailed attention to the scope of Section 5 coverage and to the availability of "bailout," Appellants' citation to Mr. Suitts' single obscure and defensive comment demonstrates an *utter absence* of congressional intent to extend the preclearance penalty to non-covered States.

Bell, 432 U.S. 404 (1977), wherein preclearance was challenged *by two covered States* as an unconstitutional usurpation of powers reserved to the States. There, the Court recognized that the preclearance requirement – which, in effect, "automatically suspends the operation of voting regulations enacted [by covered jurisdictions]" (*Katzenbach*, 383 U.S. at 335) – was an extraordinary congressional remedy which exacted severe and unprecedented "federalism costs." *See Miller v. Johnson*, 115 S.Ct. 2475, 2493 (1995); *Katzenbach*, 383 U.S. at 358-362 [Black, J., concurring and dissenting]. This extreme penalty was nevertheless deemed permissible for two principal reasons.

First, the Court was satisfied that Congress had carefully crafted its initial *coverage formula* to capture only those "perpetrators of evil" known by Congress to have engaged in "widespread and persistent discrimination in voting" through "obstructionist tactics" and "systematic resistance to the Fifteenth Amendment." *Katzenbach*, 383 U.S. at 328. The Court repeatedly emphasized that Congress' original Section 4(b) formula was intentionally designed to ensnare only known persistent wrongdoers, and determined that "Congress was therefore entitled to infer a significant danger of the evil *in the few remaining States and political subdivisions covered by § 4(b) of the Act.*" *Id.* at 329; emphasis added. *And see Briscoe*, 432 U.S. at 414; A. Thernstrom, *Whose Votes Count? Affirmative Action and Minority Voting Rights*, pp. 17, 21-22, 39, 180 (1987) ("Thernstrom").

Second, the Court emphasized that any innocent governmental unit wrongly *caught within the coverage formula*, and thereby made subject to preclearance, could readily

extricate itself from the Section 5 penalty through Section 4(a) of the Act (42 U.S.C. § 1973b(a)) – the "bailout" provision – which imposed a "quite bearable" burden of proof upon such States and subdivisions. *Katzenbach*, at 332; *and see Briscoe*, 432 U.S. at 412 and n. 11.[14]

More recently, this Court has suggested that Section 5's preclearance punishment may be unjustified in some circumstances. *See Miller*, 115 S.Ct. at 2493. *And see Bossier*

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[14] The Act's "bailout" provision, too, strongly supports the District Court's reasoning here. Under Section 4(a), jurisdictions subject to preclearance may seek a declaratory judgment that preclearance is no longer necessary. Section 4(a) describes those entities upon which the preclearance penalty is imposed (and which may, therefore, seek "bailout") as falling in three, and *only* three, categories: (1) "any State with respect to which the determinations [inclusion within coverage formulae] have been made . . . "; (2) "any political subdivision of such [covered] State . . . , though such determinations were not made with respect to such subdivision as a separate unit . . . " [the *Sheffield* situation]; and (3) "any political subdivision with respect to which such determinations have been made as a separate unit . . . "

Congress did not make bailout available to the fourth category urged by Appellants – i.e., "any State containing one or more covered subdivisions, though no [coverage] determination has been made as to such State" – *because nothing in the Voting Rights Act contemplates that such presumptively innocent States would be burdened by the preclearance penalty in the first place.* Only the third category in Section 4(a) relates to conditions in non-covered States, and it says *nothing* about imposing the preclearance penalty upon those *States*. Rather, preclearance is required only of any specific *"political subdivision"* caught in the coverage formulae; and the penalty is expressly imposed upon such a subdivision *"as a separate unit."* Emphasis added.

Parish, 117 S.Ct. at 1498 [noting "the serious federalism costs already implicated by § 5"]. If principles of federalism lead the Court to question application of the preclearance penalty *to covered jurisdictions*, then the penalty can have no application whatsoever *to governmental units which, like California, were never identified as suspect under the Act's coverage formulae in the first place*. Any attempt to require such presumptively innocent sovereign governmental units "to entreat federal authorities in faraway places for approval of local laws before they can become effective" (*Katzenbach*, 383 U.S. at 359, Black, J. concurring and dissenting) would be an unwarranted and impermissible intrusion into the States' sovereign domain. *See also, e.g., City of Rome*, 446 U.S. at 202 [Powell, J., dissenting] ["preclearance, like any remedial device, can be imposed only in response to some harm"].[15] Non-covered jurisdictions may be sued under Section 2, or under the Constitution; but Section 5 has no application.[16]

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[15] *See also* Thernstrom, at 40 ("Had the original act in 1965 been less precise in its aim, had it upset the normal balance in federal-state relations in both North and South, it would not have stood up to constitutional scrutiny.") *Cf. Perkins v. Matthews*, 400 U.S. at 406-407, Black, J., dissenting: "Except as applied to a few Southern States in a renewed spirit of Reconstruction, the people of this country would never stand for such a perversion of the separation of authority between state and federal governments."

[16] Appellants and the United States decry the "serious loophole" that would result from affirming the District Court, but their claim is specious. Any "loophole" has been created *by Congress*, which elected not to place each of the 50 States and all of their subdivisions under the preclearance penalty, but rather to penalize only those whose status as "presumptive wrongdoers" is established by the Act's coverage formulae.

III. APPELLANTS' THEORY FINDS NO SUPPORT IN DECISIONAL LAW

Although Appellants cite several judicial decisions in their Jurisdictional Statement, *they present no case law that directly supports their claim*. The central notion underlying their appeal – namely, that federal preclearance requirements should be extended beyond the Act's coverage provisions to encompass legislative enactments and administrative decrees of non-covered States – has never been addressed, much less adopted, by this Court. Rather, as USDOJ concedes, the argument raises an issue of first impression, and (apart from the unanimous decision below) "there is no case law that explicitly discusses the issues . . . ."[17]

Appellants therefore resort to cases in which the issue was *not* raised or discussed, and they ask this Court to *infer from the courts' silence* that there were *implied* precedential rulings therein that bolster Appellants' theory. J.S. 9-12. *And see, e.g., Shaw v. Hunt*, ___ U.S. ___, 116 S.Ct. 1894 (1996) (*"Shaw II"*); *United Jewish Organizations, Etc. v. Carey*, 430 U.S. 144 (1977) (*"UJO"*). In *Shaw II*, as Appellants admit, "the jurisdictional issue was not

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[17] At the District Court's December 16, 1997, Hearing on Tentative Order, Mr. Cal G. Gonzales, counsel for USDOJ, explained: "[T]his case, and the argument raised here, are first impression. We know of no cases, or no argument out there, *there is no case law that explicitly discusses the issues that are confronted by this court.*" Transcript at p. 37; emphasis added. *See also* U.S. Brief at 19: "The Court has never addressed whether or how that 'lack of discretion' concept would apply to a situation in which a covered political subdivision must administer voting changes under *state* law." Emphasis in original.

addressed directly . . . ." J.S. 11.[18] And the *UJO* language cited by Appellants as "analysis" is simply a recitation of procedural history, not an appraisal of the scope of Section 5's preclearance penalty.[19]

It is well settled, however, that such non-resolutions do not serve as precedent. *See, e.g., Brecht v. Abrahamson*, 507 U.S. 619, 631 (1993) [Where issue never squarely addressed before, and at most has been assumed, Court is free to address and decide it]; *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 119 (1984) [" '[W]hen

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[18] Neither was the jurisdictional issue addressed in *"Shaw I." Shaw v. Reno*, 509 U.S. 630, 113 S.Ct. 2816 (1993). Rather, the Court merely observed that North Carolina had voluntarily submitted its redistricting plan for preclearance. *Id.* at 2820.

[19] In describing the procedural history of *UJO*, the Court may appear to have suggested that non-covered States must submit their plans for preclearance:

> Litigation to secure exemption from the Act was unsuccessful, and it became necessary for New York to secure the approval of the Attorney General or of the United States District Court for the District of Columbia for its 1972 reapportionment statute insofar as that statute concerned Kings, New York, and Bronx Counties.

UJO, at 148-149; *and see id.* at 156-157. However, closer examination reveals that in *UJO*, as in the *Shaw* cases, the State had voluntarily submitted to Section 5 scrutiny, and the issue whether Section 5 could be stretched beyond covered units was not raised or litigated, or even discussed, in that proceeding. *See also United Jewish Org. of Williamsburgh v. Wilson*, 510 F.2d 512 (2d Cir. 1975). Rather, once New York's "bailout" request was denied, the *UJO* Court – without addressing or deciding the validity of New York's *voluntary* submission to Section 5 coverage – merely explained the logical consequences thereof.

questions of jurisdiction have been passed on in prior decisions *sub silentio*, this Court has never considered itself bound when a subsequent case finally brings the jurisdictional issue before us.' " (Quoting from *Hagans v. Lavine*, 415 U.S. 528, 533, n. 5 (1974))]; *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 and n. 9 (1952).[20]

The case of *Sheffield*, 435 U.S. 110, likewise provides no help to Appellants. *See* J.S.App. 5, n. 1. *Sheffield* turned on a quite different principle: that, when a *State* has been designated as a covered jurisdiction, then the cities and other *subordinate political subunits subject to the control of that covered State* are also deemed covered. *And see City of Rome*, 446 U.S. 156 [where city's coverage derives from State's coverage, city may not take advantage of "bailout" provision unless entire covered State qualifies for "bailout"]. *See also* U.S. Brief at 15.

Here, of course, the State is plainly not a "subdivision" or "instrumentality" of, or "subordinate to," the

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[20] *Brown Shoe Co. v. United States*, 370 U.S. 294, 306-307 (1962), cited by Appellants, is not to the contrary. There, in addressing the Supreme Court's appellate jurisdiction under the Expediting Act, this Court observed that the jurisdictional issue (finality of the district court's orders) *had previously been expressly raised and resolved*, though "[o]n but few occasions . . . ." With respect to prior cases in which the jurisdictional question had been "passed over without comment," however, the Court noted that "we are not bound by previous exercises of jurisdiction in cases in which our power to act was not questioned but was passed *sub silentio*. . . ." (citing *U.S. v. Tucker Truck*).

covered County, and the County clearly acted pursuant to State policy in this case.[21]

IV. USDOJ REGULATIONS CANNOT EXPAND THE STATUTORY REACH OF THE PRECLEARANCE PENALTY

The District Court correctly rejected Appellants' further claim that USDOJ regulations (specifically, 28 C.F.R. §§ 51.1(a) and 51.23(a)) somehow operate to bring non-covered jurisdictions within the scope of Section 5's preclearance penalty. J.S.App. 5, n. 1; *and see* J.S. 19-21. To the extent that these regulations may purport to expand the penalty, of course, they defy Congress' specific coverage provisions; they undermine the sovereignty of non-targeted states; they are patently beyond USDOJ's authority; and they are entitled to no deference whatsoever.[22] Nor

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[21] In suggesting that the State merely "ratified" or "incorporated" County policy choices here, Appellants ignore the Judicial Council's 1972 report, which clearly establishes that countywide consolidation of Monterey's inferior courts was *the State's* policy choice, in which the County acquiesced. S.A. 1-26; S.A. 27; *and see* J.S.App. 7. Further, the State's 1979 amendment to Cal. Gov. Code § 73560 does not reference, much less "incorporate," any County ordinances.

[22] No deference is accorded to USDOJ regulations or interpretations not authorized by the Act and/or violative of the U.S. Constitution. *See, e.g., Bossier Parish,* 117 S.Ct. 1491 [USDOJ regulation ignores Congress' clear distinction between Section 2 and Section 5]; *Miller v. Johnson,* 115 S.Ct. 2475 (1995) [USDOJ preclearance standards promote discrimination, racial stereotyping, and unconstitutional race-based districting]; *Shaw II,* 116 S.Ct. 1894 [same]; *Bush v. Vera,* ___ U.S. ___, 116 S.Ct. 1941 (1996) [same]; *Presley v. Etowah County Comm'n.,* 502 U.S. 491, 508 (1992) [USDOJ ignores limitation of preclearance penalty to voting changes].

are unauthorized USDOJ regulations redeemed or given more weight merely because they were promulgated long before, or were followed in the past. *See, e.g., Bossier Parish,* 117 S.Ct. 1491 [Court invalidates regulation (28 C.F.R. section 51.55(b)(2)) long followed by USDOJ in evaluating preclearance submissions].

Appellants' recitation of the principle that "ambiguities" in the scope of Section 5 coverage "must be resolved against the submitting jurisdiction" (J.S. 20-21) is, of course, inapposite here. That convention *presupposes* that the "submitting jurisdiction" is a covered State or a covered subdivision, and is employed only to resolve *what kinds* of voting changes initiated by such a body require preclearance. *See, e.g., NAACP v. Hampton County,* 470 U.S. at 178-179. In addressing the very different threshold issue of whether a particular governing body must submit *any* of its enactments and administrative decrees for preclearance, the Act includes specific formulae to identify and list the covered bodies, leaving no room for ambiguity.[23] If there were ambiguity, furthermore, this Court has made it abundantly clear, in *Will v. Michigan,* in *Gregory v. Ashcroft,* in *Katzenbach,* and in *Miller,* that such ambiguity must be resolved in favor of the sovereignty of the States.

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[23] Here, in view of Congress' specific coverage formulae, the more appropriate maxim is: *Expressio unius est exclusio alterius. Cf. Leatherman v. Tarrant County Narcotics Unit,* 507 U.S. 163, 168 (1993).

V. EXTENDING THE PRECLEARANCE PENALTY WOULD DISSERVE SECTION 5's PURPOSES AND POLICIES

Contrary to the claims of Appellants and the United States, dismissal of this coverage action does nothing to undercut the purpose, policy, or effectiveness of Section 5, or to "circumvent" Congress' intent. Section 5 preclearance is designed and intended only to provide remedial monitoring for those suspect jurisdictions which Congress has identified as having "resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination". *Katzenbach*, 383 U.S. at 335. The purpose and policy of Section 5 is thus entirely achieved so long as *changes devised by covered jurisdictions*, whether legislative or executive in origin, are suspended *to prevent a repetition of the covered jurisdictions' past pattern of wrongdoing*. *See* J.S.App. 5 and n. 1. No valid policy would be served by stretching Section 5 beyond these logical limits, and basic constitutional principles of federalism – not to mention the fundamental voting rights of citizens within non-covered jurisdictions – would be gravely compromised by such an approach.

Furthermore, Appellants' proposed expansion would yield truly bizarre and paradoxical results. Here, for example, the State would be penalized with the preclearance requirement – i.e., treated as a "presumptive wrongdoer" with a record of "ingeniously defying" federal voting rights – only insofar as its enactments and administrative decrees affect any of its four covered counties. With respect to its other 54 counties, and the

tens of millions of citizens residing therein,[24] the State would be treated as a respected sovereign whose directives are *presumptively valid*, and it would remain free to implement any voting changes without prior federal review or approval. Thus, the State would be bifurcated, with respect to election practices, at least, and the Legislature could no longer dictate statewide policy: one branch would be controlled by federal authorities (USDOJ and the Washington D.C. District Court), while the other would be controlled by elected state officials.

Taking Proposition 191 as an example, the State might eliminate all justice courts from its judicial system "statewide," but USDOJ could require its "mini-state" of four covered counties to maintain a justice court system. Proposition 220, which voters will consider in June, raises the same specter of a divided, patchwork State, in which all but four counties would be permitted to abolish their municipal courts on the vote of sitting judges. Such "partial coverage" scenarios are illogical, unworkable, and preposterous. Either a State or subdivision falls within Congress' specific coverage formulae, in which case *any* significant voting change it initiates is subject to the preclearance penalty, or it remains free to exercise its

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[24] Hispanics constitute a significant percentage of the population in many *non-covered* California counties: 26.6% of the population of Santa Barbara County, for example; 33.3% of Colusa County; 34.5% of Madera County; 37.8% of Los Angeles County; 45.8% of San Benito County; and 65.8% of Imperial County. *California Statistical Abstract 1995*, p. 19, Table B-5. Hispanics constitute 33.6% of Monterey County's population. *Id.*

sovereign rights and powers without federal oversight and prior restraint.

CONCLUSION

For the foregoing reasons, the unanimous judgment below, holding that Section 5 and its preclearance penalty have no application to the enactments and decrees of a non-covered State, should be affirmed.

Dated: March 27, 1998

Respectfully submitted,

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INDEX TO STATE'S APPENDIX

EXHIBIT A

[p. 55] THE JUDICIAL COUNCIL OF CALIFORNIA
STATE BUILDING, SAN FRANCISCO 94102

August 18, 1972

Mr. Warren Church
Chairman of the Board of Supervisors
Monterey County
P. O. Box 1819
Salinas, California 93901

Dear Mr. Church:

In response to the request of your board the Judicial Council has made a study of Monterey County judicial districts. The recommendations that follow have been prepared in accordance with Section 71042 of the Government Code, which provides as follows:

> "From time to time, following its survey of the condition of business in the several courts, the Judicial Council shall submit to the boards of supervisors its recommendations concerning the consolidation or enlargement of judicial districts and other alteration of district boundaries *with a view toward creating a greater number of full-time judicial offices, equalizing the work of the judges, expediting judicial business, and improving the administration of justice.*" (Emphasis added.)

It is recommended by the Judicial Council that the lower courts in Monterey County be consolidated into a countywide municipal court district with the new court sitting full time in Salinas and Monterey and holding sessions in King City as needed.

The recommended consolidation would be effectuated in the following stages:

1. The Gonzales and Soledad Justice Court Districts should be immediately consolidated into the Salinas Municipal Court District.

This recommendation is predicated on vacancies existing in both the Gonzales and Soledad districts. In the event there is no vacancy in the Gonzales district, then Gonzales should be consolidated with Soledad where a vacancy now exists.

[p. 56] 2. The Monterey-Carmel Municipal Court District and the Salinas Municipal Court District should be consolidated into a single municipal court district as soon as appropriate legislation can be enacted.

3. Whenever a judicial vacancy occurs in a justice court, the district should be consolidated with the municipal court district. However, if a vacancy occurs in the San Ardo or Greenfield Justice Court Districts prior to a vacancy in the King City Justice Court District, the district with the vacancy should be consolidated with the King City district.

A copy of the staff study prepared for the Judicial Council is attached. It includes additional recommendations concerning district boundaries and court locations.

This plan preserves adequate and reasonable access to the courts for the residents of the county, while at the same time permitting the court to function efficiently and

effectively, and would thereby contribute to improving the administration of justice.

Very truly yours,

/s/ Donald R. Wright
Chief Justice of California and
Chairman of the Judicial Council

Attachment

[p. 57] SURVEY OF MONTEREY COUNTY JUDICIAL DISTRICTS

A. COUNTY CHARACTERISTICS

Monterey County is located to the south of the San Francisco Bay Area with Salinas the county seat approximately 110 miles south of San Francisco. It borders on Santa Cruz, San Luis Obispo, San Benito, Kings and Fresno Counties and the Pacific Ocean.

The county has about 100 miles of coastline. The rugged Santa Lucia range forms the western border of the county and the Gabilan and Diablo ranges constitute the eastern border. Running the length of the county from Monterey Bay is the agriculturally rich Salinas Valley which is 10 to 20 miles wide.

Agriculture, which occupies seven percent of the total land area, is the most important element in the county's economy while agricultural-related industries are of additional importance. Tourism is also a major

factor in the economy and the Monterey-Carmel area is a year-round attraction.

Approximately 20 percent of the land area of the county is in state and federal forest and parks, and 9 percent of the county is under military ownership.

Monterey County is approximately 100 miles in length and an average of 35 miles in width. The county has an outstanding road system. U.S. Highway 101 in the Salinas Valley and State Highway 1 on the coast run the length of the county. State Highway 68 is a heavily traveled route connecting the Monterey Peninsula and the Salinas Valley. State Highway 198 [p. 58] runs east from the southern part of the county into the San Joaquin Valley. Other state highways in the county include Highways 156, 183, 146, 25 and 218.

The total population of the county in the most recent federal census was 247,450, a 27 percent increase over its 1960 population. Approximately 62 percent of the population resides in the county's incorporated cities and 17 percent on military bases. Eighty nine percent of the population is concentrated in the northern third of the county which includes Salinas and the Monterey Peninsula areas.

B. JUDICIAL DISTRICTING HISTORY

The county is currently divided into nine judicial districts with two municipal courts and seven justice courts. The two municipal court districts, Salinas and Monterey-Carmel, and the Pacific Grove and Castroville-Pajaro Justice Court Districts are located in the northern

populous portion of the county. The five judicial districts in the southern two-thirds of the county are respectively from north to south, the Gonzales, Soledad, Greenfield, King City and San Ardo Justice Court Districts. The courts in these latter districts are all situated adjacent to U.S. Highway 101.

Prior to the lower court reorganization in the early 1950's, Monterey County had 22 lower courts. At the time of the reorganization the Judicial Council recommended that the county be divided into five judicial districts as follows:

[p. 59] 1. Salinas Municipal Court District

2. Monterey-Pacific Grove Municipal Court District (this also includes the Carmel area)

3. Castroville-Pajaro Justice Court District

4. Soledad-Gonzales Justice Court District

5. King City-Greenfield Judicial District (this also includes the San Ardo District).

The board of supervisors, however, divided the county into two municipal court and eight justice court districts. The only subsequent change was in May 1968 when the Castroville Justice Court District and the Pajaro Justice Court District were consolidated to form the Castroville-Pajaro Justice Court District.

C. REQUEST FOR SURVEY

The Monterey County Board of Supervisors on May 25, 1972 requested the Judicial Council to make a study of the lower court system in the entire county. This request

was prompted by a vacancy in the Soledad Judicial District.

D. INFORMATION CONCERNING EXISTING JUDICIAL DISTRICTS

1. *Salinas Municipal Court District* (two authorized judges)

a. Location: The Salinas Municipal Court District is in the northern portion of the county. Its northern boundary, extending from Monterey Bay to the San Benito County line, forms the southern boundary of the Castroville-Pajaro Justice County District. The district also borders on the Monterey-Carmel Municipal Court District to its west and south [p. 60] and the Gonzales Justice Court District to the southeast. Salinas is very accessible to other sections of the county via Highways 101, 68 and 183. Salinas is approximately 25 miles south of the northern border of the county via Highway 101 and 19 miles from the Monterey-Carmel area on its southwest.

b. Estimated Population:[1] Judicial District – 75,500; Salinas – 61,200.*

c. Court Facilities: The court is located in the county courthouse complex in downtown Salinas. Also located in the complex are three superior court departments, the sheriff-marshal's office, the public defender's office and the district attorney's office. The court facility

[1] Population figures are based on 1970 U.S. census data except for cities for which later data was available.

* February 1972 data.

is very adequate. There is also sufficient public parking area adjacent to the courthouse.

d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	24,529
Parking filings	42,449
Filings excluding ordinary traffic and parking	7,007
Felony filings	715
Dispositions after felony hearing or contested trial	951
Juries selected and sworn	62

[p. 61] e. Weighted Judicial Caseload:[2] In 1971-72 fiscal year there were 118,499 weighted units, or the workload equivalent for two judges:

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $251,315; 1972-73 fiscal year budget: $281,086.

2. *Monterey-Carmel Municipal Court District* (two authorized judges)[3]

a. Location: The Monterey-Carmel Municipal Court District is located in the northwestern section of

[2] The Judicial Council in its reports to the Legislature relating to the need for additional judges uses a weighted caseload system which applies different weights to the various categories of filings. The standard workload per judge is 58,500 weighted units for one and two-judge courts.

[3] A third judge has been authorized by the 1972 Legislature.

the county and extends from the Monterey Peninsula area southward and includes about one-half of the county's coastline. The populated portion of the district is in the Monterey Peninsula and Carmel Valley areas. The district includes the incorporated cities of Carmel, Del Rey Oaks, Monterey, Sand City and Seaside. The City of Monterey is approximately 19 miles from Salinas on Highway 68. The district includes Ford [sic] Ord and the Naval Post-graduate School.

b. Estimated Population: Judicial District – 106,700 (includes 40,000 living on military bases, of whom about 16,000 are in the City of Seaside); Monterey – 26,950;* Seaside – 36,250;* Carmel – 4,640;* Del Rey Oaks – 1,823; Sand City – 212.

[p. 62] c. Court Facilities: The court is located in a county complex, about a mile from the business area of Monterey and adjacent to Highway 1. The court facilities are very adequate and there is a new courtroom under construction. Departments of the superior court and branches of the district attorney's office and the public defender's office are also located in the same building. Parking presents a problem since the building complex is on top of a hill and the limited parking on the highland level necessitates inconvenient parking and a walk from the lower level.

d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	26,929
Parking filings	85,283
Filings excluding ordinary traffic and parking	6,788

Felony filings	699
Dispositions after felony hearing or contested trial	1,756
Juries selected and sworn	290

e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 133,881 weighted units, or the workload equivalent for 2.3 judges.

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $336,705; 1972-73 fiscal year budget: $377,354.

3. *Castroville-Pajaro Justice Court District*

a. Location: The Castroville-Pajaro Justice [p. 63] Court District is located in the extreme northern section of the county and borders on Monterey Bay and Santa Cruz and San Benito Counties. The only judicial district in the county that is contiguous to this district is the Salinas Municipal Court District to its south. Highways 1, 101 and 156 run through the district. There are no incorporated cities in the district. The town of Castroville, where the court sits, is 9 miles from Salinas and 15 miles from Monterey.

b. Estimated Population: Judicial District – 23,350.

c. Court Facilities: The court is located in a county-owned building which also houses a county library branch. The court has no separate jury deliberation room and the courtroom is therefore used for this purpose. The courthouse facilities appear adequate for the court's workload.

d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	8,635
Parking filings	349
Filings excluding ordinary traffic and parking	1,114
Felony filings	78
Dispositions after felony hearing or contested trial	309
Juries selected and sworn	17

e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 26,566 weighted units, or the workload [p. 64] equivalent for approximately .5 judge.[4]

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $49,710; 1972-73 fiscal year budget: $55,512; judge's salary: $14,400 per year.

Constable's Budget: Estimated expenditures in 1971-72 fiscal year: $6,590; 1972-73 fiscal year budget: $6,930.

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[4] The weighted caseload system was designed for municipal courts. However, for the purpose of this study it was applied to the justice courts. It should be noted that it does not take into consideration that in part-time courts it is difficult to calendar cases in such a way as to make the most efficient use of judge time. Therefore, the justice court judge probably takes more time with his court's workload than is here indicated.

4. *Pacific Grove Justice Court District*

a. Location: The Pacific Grove Justice Court District encompasses a small area on the tip of the Monterey Peninsula and includes only the City of Pacific Grove. The City of Monterey adjoins Pacific Grove.

b. Estimated Population: Judicial District and City of Pacific Grove – 13,500.

c. Court Facilities: The court is located in a modern office building in Pacific Grove and includes a judge's chambers, clerk's office and a very adequate courtroom. There is, however, no separate jury deliberation room.

[p. 65] d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	2,637
Parking filings	2,389
Filings excluding ordinary traffic and parking	563
Felony filings	79
Dispositions after felony hearing or contested trial	154
Juries selected and sworn	13

e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 11,675 weighted units, or the workload equivalent for .2 judge.

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $32,825; 1972-73 fiscal year budget: $34,094; judge's salary: $11,520 per year.

Constable's Budget: Estimated expenditures in 1971-72 fiscal year: $4,990; 1972-73 fiscal year budget: $5,730.

5. *Gonzales Justice Court District*

a. Location: The Gonzales Justice Court District is located to the south of the Salinas Municipal Court District with Highway 101 running down the center of the District. This district also borders on the Monterey-Carmel Municipal Court District to the west, the Soledad Justice Court District to the south and San Benito County to the east. The City of Gonzales, where the court sits, is approximately 17 miles south of Salinas and nine miles north of Soledad on Highway 101.

[p. 66] b. Estimated Population: Judicial District – 5,200; Gonzales – 2,575.

c. Court Facilities: The court is located in the City Hall of the City of Gonzales. The courtroom is also used for the City Council and Planning Commission meetings. There is a separate judge's chambers and clerk's office. The courtroom is not adequate for jury trials. There were, however, only six jury trials in 1971-72.

d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	3,553
Parking filings	94
Filings excluding ordinary traffic and parking	412
Felony filings	8
Dispositions after felony hearing or contested trial	51
Juries selected and sworn	6

e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 7,881 weighted units or the workload equivalent for slightly over .1 judge.

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $23,320; 1972-73 fiscal year budget: $27,223; judge's salary: $11,520 per year.

Constable's Budget: Estimated expenditures in 1971-72 fiscal year: $5,400; 1972-73 fiscal year budget: $5,680.

6. *Soledad Justice Court District*

a. Location: The Soledad Justice Court District [p. 67] is located in the central portion of the county. Its most populous area is adjacent to Highway 101. The district lies south of the Gonzales district and also borders on the Monterey-Carmel, Greenfield, King City and San Ardo Judicial Districts. The district includes a very small portion (Anderson Landing) of the coast between the Monterey-Carmel and the San Ardo Judicial Districts. A state prison (Soledad) is located just north of the City of Soledad which is approximately 8 miles south of Gonzales, 25 miles south of Salinas and 28 miles north of King City.

b. Estimated Population: Judicial District – 11,000 (includes 2,400 state prisoners); Soledad – 4,320.*

c. Court Facilities: The court occupies rented quarters in a one-story professional building in the City of Soledad. The courtroom is small for the holding of jury trials. However, there have been no jury trials during the past fiscal year. The facilities also include a clerk's office and a judge's chambers.

d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	2,548
Parking filings	154
Filings excluding ordinary traffic and parking	505
Felony filings	25
Dispositions after felony hearing or contested trial	50
Juries selected and sworn	0

[p. 68] e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 9,642 weighted units, or the workload equivalent for .2 judge.

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $25,385; 1972-73 fiscal year budget: $24,393; judge's salary: $11,520 per year.

Constable's Budget: Estimated expenditures in 1971-72 fiscal year: $5,725; 1972-73 fiscal year budget: $6,135.

7. *Greenfield Justice Court District*

a. Location: The Greenfield Justice Court District is located in the approximate center of the county between Soledad and King City Justice Court Districts and also borders on the San Ardo Justice Court District to the south. The City of Greenfield is nine miles south of Soledad and 13 miles north of King City on Highway 101.

b. Estimated Population: Judicial District – 4,000; Greenfield – 2,950.*

c. Court Facilities: The court is located in a county rented building in Greenfield. It has a courtroom, a judge's chambers and a clerk's office. The building was formerly a garage and has no windows.

[p. 69] d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	2,610
Parking filings	0
Filings excluding ordinary traffic and parking	293
Felony filings	15
Dispositions after felony hearing or contested trial	14
Juries selected and sworn	4

e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 7,104 weighted units, or the workload equivalent for slightly more than .1 judge.

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $19,550; 1972-73 fiscal year budget: $20,984; judge's salary: $6,940 per year.

Constable's Budget: Estimated expenditures in 1971-72 fiscal year: $6,160; 1972-73 fiscal year budget: $6,680.

8. *King City Justice Court District*

a. Location: The King City Justice Court District is located in the east-central portion of the county; to its north and west are the Soledad and Greenfield districts; to its south is the San Ardo district; and on its east

is San Benito County. King City is approximately 47 miles south of Salinas on Highway 101.

b. Estimated Population: Judicial District – 4,700; King City – 3,800.*

[p. 70] c. Court Facilities: The court is located in the City Hall of King City. The court has a large courtroom which also serves as the City Council chambers. There is a separate judge's chambers and clerk's office, the latter, however, being inadequate because of its small size. The county has plans underway for the construction of a new county building in King City which will house the court.

d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	5,493
Parking filings	141
Filings excluding ordinary traffic and parking	688
Felony filings	18
Dispositions after felony hearing or contested trial	71
Juries selected and sworn	14

e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 12,094 weighted units, or the workload equivalent for .2 judge.

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $34,115; 1972-73 fiscal year budget: $37,984; judge's salary: $13,500 per year.

Constable's Budget: Estimated expenditures in 1971-72 fiscal year: $7,360; 1972-73 fiscal year budget: $7,630.

9. *San Ardo Justice Court District*

a. Location: San Ardo Justice Court District is the largest judicial district in area in the county. It [p. 71] occupies most of the southern portion of the county and extends from the ocean to its west to San Benito, Fresno and Kings Counties on its east. On its north it borders on the Soledad, Greenfield and King City districts and to its south is San Luis Obispo County. Included in the district are Hunter Liggett Military Reservation and a portion of Camp Roberts. A long stretch of Highway 1 along the ocean is in the judicial district. The town of San Ardo is 19 miles south of King City.

b. Estimated Population: Judicial District – 3,500 (includes 1,000 living on military bases).

c. Court Facilities: The court is located in the town of San Ardo, just off Highway 101. The court facility is in a rented building which has a courtroom and a clerk's office but no separate judge's chambers.

d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	5,309
Parking filings	30
Filings excluding ordinary traffic and parking	372
Felony filings	10
Dispositions after felony hearing or contested trial	34
Juries selected and sworn	13

e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 11,644 weighted units, or the workload equivalent for .2 judge.

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $26,180; 1972-73 fiscal year budget: [p. 72] $27,329; judge's salary: $11,520 per year.

Constable's Budget: Estimated expenditures in 1971-72 fiscal year: $7,295; 1972-73 fiscal year budget: $7,610.

E. PROPOSED RECOMMENDATIONS

It is proposed that the Judicial Council recommend the consolidation of the judicial districts in Monterey County into one countywide municipal court district. The court would sit full time in Salinas and Monterey and would hold sessions in King City as needed. In addition, a full-time clerk's office would be maintained in King City and clerk's office services in the City of Soledad as needed.

The proposed consolidation should take effect in the following stages:

1. The Gonzales and Soledad Justice Court Districts should be immediately consolidated into the Salinas Municipal Court District. It is suggested that a clerk's office be maintained in Soledad and that the court temporarily conduct sessions there as needed.

a. Upon the consolidation of the Gonzales and Soledad Justice Court Districts into the Salinas Municipal Court District the western Monterey Bay section (Marina

area) of the Salinas District should be added to the Monterey-Carmel Municipal Court District.

The two-judge Salinas court now has a full workload. The added work from the Gonzales and Soledad courts would [p. 73] amount to the equivalent of approximately .3 of a judge. This increase would probably be offset by the loss of the workload originating in the Marina area which includes a population of approximately 10,000. The Monterey-Carmel court could also give assistance, if needed, to Salinas after a third judge is appointed to that court.

b. It is also recommended for immediate action that the coastal strip from Anderson Landing to the San Luis Obispo County line be added to the Monterey-Carmel district. This would include a very small portion of the Soledad district where that district extends to the ocean and all of Highway 1 now included in the San Ardo Justice Court District.

c. The recommendation to consolidate the Gonzales and Soledad districts into the Salinas district immediately is predicated on the existing judicial vacancy in Soledad and an anticipated vacancy in Gonzales in September 1972. If the judge in the Gonzales district does not follow through on his stated intention to retire, then the Gonzales district should be consolidated with the Soledad district at this time and the consolidation into the Salinas district would be made upon the occurrence of a judicial vacancy in the enlarged justice court district.

2. The Monterey-Carmel and the Salinas Municipal Court Districts should be consolidated into a single municipal court district as soon as necessary legislation can be enacted.

Legislation should be introduced in the 1973 Legislature to provide for the staffing and the number of judges in a consolidated municipal court district. A study of the court workload prior to the introduction of such legislation would determine whether five or six judges will be needed to handle [p. 74] the consolidated court's 1974 projected workload.

3. It is recommended that whenever a judicial vacancy occurs in a justice court district such district should be consolidated with the municipal court district, except, however, that if a vacancy occurs in the San Ardo or Greenfield Justice Court District prior to a vacancy in the King City Justice Court District the district or districts with a vacancy should be consolidated with the King City District.

The recommendation to consolidate the lower courts into a countywide municipal court district with sessions as indicated takes into consideration geographical locations and judicial workloads, as well as the objectives declared in Government Code Section 71042 for the creation of a greater number of full-time judicial offices, equalizing the work of the judges, expediting judicial business, and improving the administration of justice.

Six of the seven justice courts in the county have workloads for about .2 of a judge or less. The Pacific Grove court is only minutes away from the court in Monterey and the Gonzales and Soledad courts are 20 to 30 minutes from both Salinas and King City. King City, where sessions are recommended is only 10 minutes from Greenfield and about 20 minutes from San Ardo and could therefore conveniently serve these areas.

The Castroville-Pajaro Justice Court District with a workload equivalent for about one-half judge has no incorporated cities. Salinas and Monterey are only 10 and 15 minutes distant [p. 75] respectively, from Castroville and could conveniently serve the Castroville-Pajaro area.

It is also noted that in the seven justice courts 80 to 94 percent of the courts' nonparking filings are for traffic violations.[5] Traffic matters generally are terminated by bail forfeiture and most frequently involve violations on the highways by persons traveling through the district in which they are cited. The relatively few local people who have business with the courts would be provided reasonably accessible court services at the court locations which are recommended.

F. GENERAL EFFECTS

If the foregoing recommendations are followed the number of judicial districts would eventually be reduced from 9 to 1 and the number of court locations from 9 to 3.

The concentration of judicial business at fewer locations would be a convenience to those who appear most frequently in court – district attorneys, public defenders, probation officers, private attorneys, etc. It may also be a convenience for most defendants and litigants to appear in court in the larger cities of Salinas and Monterey.

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[5] Percentage of court filings for ordinary traffic and selected traffic violations: Castroville-Pajaro, 92%; Pacific Grove, 80%; Gonzales, 91%; Soledad, 83%; Greenfield, 90%; King City, 92%; San Ardo, 94%.

Arraignments, hearings and trials of defendants in custody in the county jail could be conducted in Salinas and thereby avoid many transportation and security problems. Those [p. 76] defendants held pending arraignment in city jails located in the Monterey Peninsula area could be arraigned in Monterey.

Centralized courts would necessitate some of the police officers from cities south of Salinas traveling from their cities to appear in court as witnesses. Since the travel time involved is not great and such appearances would be infrequent, this should not cause serious police problems; moreover, some time would be gained by the police not having to transport prisoners for arraignments.

The proposed consolidation would eliminate the office of constable and thus all fees collected would go into the General Fund in lieu of the present arrangement. The sheriff's office, which is also the marshal's office, could easily provide bailiff services to the court, transport prisoners and serve all civil process. Greater efficiency and better services could be obtained from a smaller expenditure of funds.

Savings could be effected by eliminating the present budget for justice court judges' salaries. The 1972-73 justice court budgets include a total of $82,920 for judges' salaries. The total workload of the justice court judges was equivalent to the workload for 1.5 municipal court judges. The annual salary of two municipal court judges is $66,962.

The elimination of six court locations would also result in direct savings in several budget items.

The centralization of jury trials in fewer locations would enable the courts to make more effective use of jurors [p. 77] and would require fewer prospective jurors to be called, with consequent savings to the public that are not reflected in the budget.

The concentration of court personnel in fewer locations would increase efficiency by making it more feasible to have specialization in the use of personnel and provide better in-service training. Likewise, the higher volume of business in a consolidated court would justify the use of more sophisticated office equipment, including the possible use of electronic data processing.

Further savings would result from the consolidation in that other government agencies, such as the district attorney's office and the public defender's office would have fewer courts in which to appear and hence would be able to manage their workloads more efficiently and effectively.

In general, the centralization of management and administration resulting from consolidation should benefit all areas of court operations, including budgeting, clerk's office, calendaring, distribution of workload, uniformity of procedures, etc., and should result in improved court services at less cost.

G. IMPLEMENTATION

As a prerequisite to the consolidation of judicial districts the board of supervisors must hold a public hearing on the matter with at least 15 days' notice by publication

in a newspaper of general circulation in the county.[6] The [p. 78] consolidation is effected by the adoption of an appropriate ordinance by the board.

In order to consolidate the municipal courts and provide the consolidated court with the necessary judges and staff two alternative procedures may be followed. Each requires state legislation to amend the Government Code provisions pertaining to the municipal courts in Monterey County. The legislation would provide for the number of judges, the staffing of the court and staff salaries.

The board could first enact an ordinance consolidating the two municipal court districts into a single municipal court district, with the ordinance to become effective upon the effective date of legislation providing for such a court.

The other alternative is for the state statute to provide that it should become effective upon the effective date of a county ordinance consolidating the courts.

In the event the board of supervisors proposes to consolidate a justice court in which there is no judicial vacancy with the municipal court, legislation could provide for the creation of a position at the desired level in the municipal court clerk's office to which the justice court judge can succeed if he so elects. (See, *e.g.*, Gov. Code § 74343.6 – pertaining to San Diego Municipal Court and National City Justice Court.)

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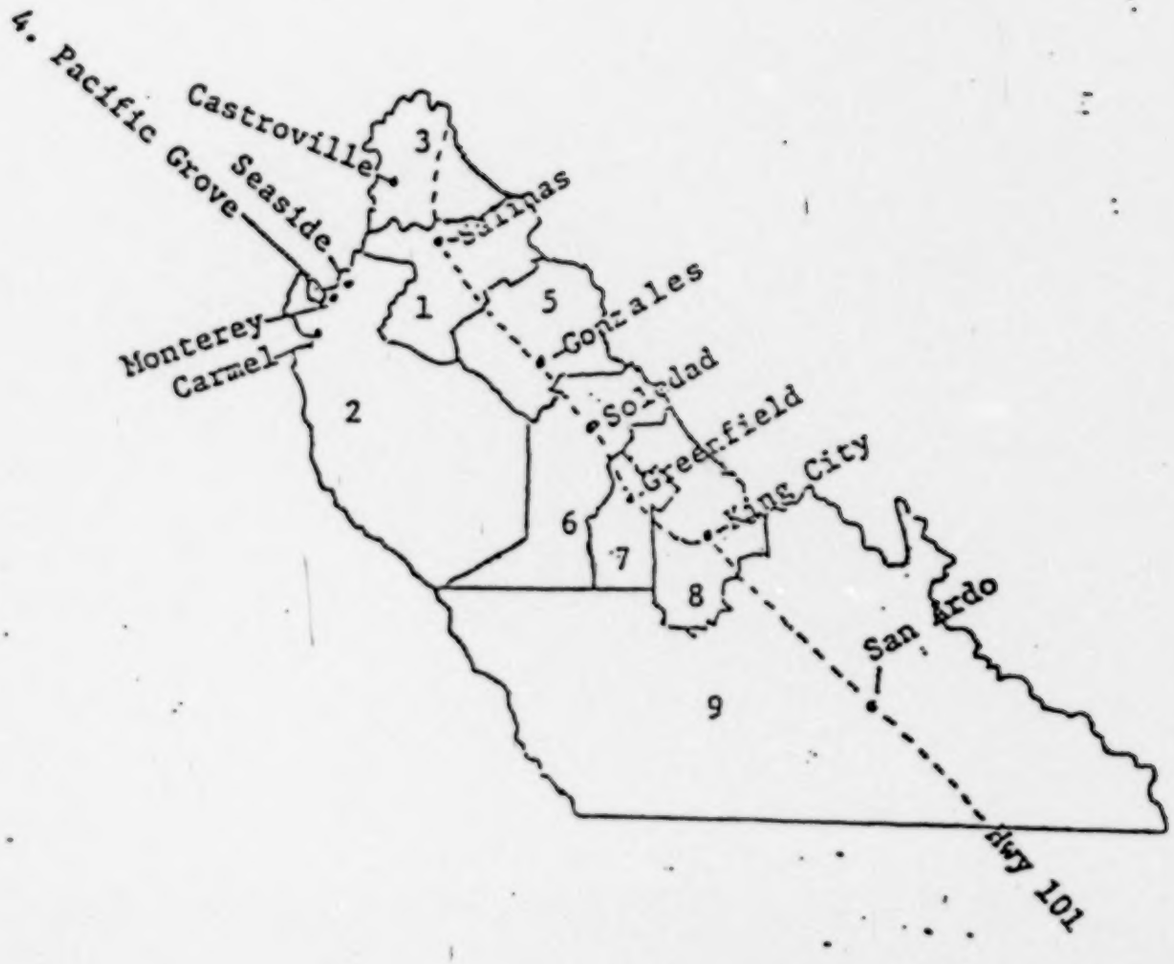
[6] Gov. Code § 71042.

It should also be noted that Government Code Section 72400 states that "The judges of a municipal court having three or more judges may appoint one traffic referee who shall hold [p. 79] office at the pleasure of the judges. A traffic referee shall serve his court full time or, if appointed to serve two or more courts, sufficient time with each to total full time. A person is ineligible to be a traffic referee unless he is a member of the State Bar of California or has had five years' experience as a justice court judge in this state within the eight years immediately preceding his appointment as a traffic referee."

MONTEREY COUNTY

Existing Judicial Districts



1. Salinas Municipal Court District.
2. Monterey-Carmel Municipal Court District.
3. Castroville-Pajaro Justice Court District.
4. Pacific Grove Justice Court District.
5. Gonzales Justice Court District.
6. Soledad Justice Court District.
7. Greenfield Justice Court District.
8. King City Justice Court District.
9. San Ardo Justice Court District.

EXHIBIT A
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Table 5

California Judicial Districts
As of June 30, 1953 to June 30, 1990

Year	Total judicial district	No. of justice courts	No. of municipal courts
1953	400	349	51
1954	400	348	52
1955	395	342	53
1956	395	341	54
1957	393	335	58
1958	390	329	61
1959	374	312	62
1960	374	307	67
1961	371	302	69
1962	370	298	72
1963	365	293	72
1964	361	288	73
1965	349	276	73
1966	339	268	71
1967	336	263	73
1968	326	253	73
1969	319	245	74
1970	319	244	75
1971	309	232	77
1972	303	226	77
1973	297	221	76
1974	291	214	77
1975	279	199	80
1976	259	175	84
1977	200	111	89
1978	197	107	90
1979	191	102	89
1980	183	100	83
1981	178	94	84
1982	179	95	84
1983	174	89	85
1984	169	84	85
1985	168	83	85
1986	169	83	86
1987	166	79	87
1988	164	76	88
1989	153	65	88
1990	149	57	92

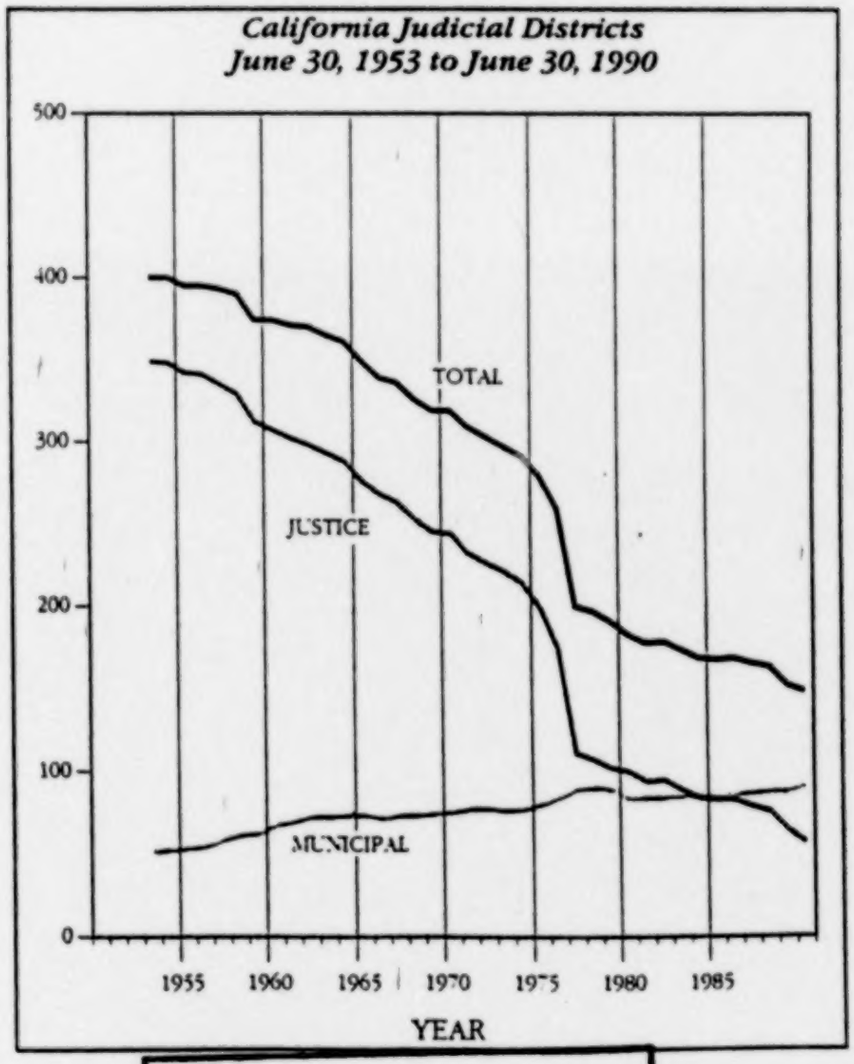

EXHIBIT 1
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Attorneys for Defendant,
MONTEREY COUNTY, CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA,

Plaintiffs,

vs.

MONTEREY COUNTY, CALIFORNIA; STATE OF CALIFORNIA,

Defendants,

STEPHEN A. SILLMAN, in his official capacity as Presiding Judge of the Monterey County Municipal Court District,

Intervenor.

_____/

Case No.
C-91 20559 RMW(EAI)

DEFENDANT MONTEREY COUNTY, CALIFORNIA'S, ANSWER TO FIRST AMENDED COMPLAINT

The Defendant, MONTEREY COUNTY, CALIFORNIA, ("MONTEREY COUNTY"), answers the Plaintiffs' First Amended Complaint as follows:

1. MONTEREY COUNTY acknowledges that the First Amended Complaint has been filed pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, and seeks declaratory and injunctive relief. MONTEREY COUNTY further acknowledges that pursuant to the express terms of Section 5, a voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date of the political subdivision's coverage must be approved pursuant to Section 5. Approval under Section 5 is secured by submitting the change affecting voting to either the United States Attorney General or the United States District Court for the District of Columbia for determination that the proposed change does not have the purpose, and will not have the effect, of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Until such Section 5 approval is secured, no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure. MONTEREY COUNTY further acknowledges that if the United States Attorney General does not interpose an objection within a 60-day period following the submission of the change affecting voting, the change can be implemented in future elections. MONTEREY COUNTY further acknowledges that a covered political subdivision can also implement the change affecting voting in future elections if the political subdivision obtains a declaratory judgment from the United States District Court for the

District of Columbia that the change affecting voting does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. MONTEREY COUNTY further acknowledges that until such Section 5 preclearance is secured, the change affecting voting cannot be implemented or enforced in any elections.

Except as otherwise acknowledged in this paragraph, MONTEREY COUNTY denies having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 1 of the First Amended Complaint, and on this basis denies such allegations.

2. MONTEREY COUNTY admits that the First Amended Complaint makes the allegations contained in paragraphs 2, 3 and 4 of the First Amended Complaint.

3. MONTEREY COUNTY admits that the Plaintiffs are seeking the remedies specified in paragraph 5 of the First Amended Complaint.

4. MONTEREY COUNTY admits the allegations contained in paragraphs 6, 7, 8, 9, and 10, inclusive, of the First Amended Complaint.

5. MONTEREY COUNTY admits that California Government Code sections 25200 and 71040 authorizes counties in the State of California to modify and consolidate municipal and justice court districts. MONTEREY COUNTY further alleges that pursuant to Government Code section 73560, which provides that the entire County of Monterey is included in one Monterey County Municipal Court District, does not allow Monterey

County to modify and consolidate municipal or justice court districts.

6. MONTEREY COUNTY admits the allegations contained in paragraphs 12 through 45, inclusive, of Plaintiffs' First Amended Complaint.

7. In answering paragraphs 46, 47, and 48 of the Plaintiffs' First Amended Complaint, MONTEREY COUNTY alleges that this Court in its April 1, 1993, Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendants' Motions expressly found that MONTEREY COUNTY is a jurisdiction subject to Section 5 preclearance provisions of the Voting Rights Act and that as such a jurisdiction, MONTEREY COUNTY must submit for preclearance any ordinances which constitute an "election change." In addition, MONTEREY COUNTY alleges that the Court further found that MONTEREY COUNTY ordinances affecting boundaries and organization of various MONTEREY COUNTY municipal court districts and judicial districts constitute election changes subject to Section 5 preclearance and that such ordinances have not been precleared pursuant to Section 5. MONTEREY COUNTY further alleges that the Court stated that such ordinances cannot be implemented by county until such clearance is received. Except as otherwise alleged in this paragraph, MONTEREY COUNTY denies having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 46, 47, and 48 of the First Amended Complaint, and on this basis denies such allegations.

8. MONTEREY COUNTY admits the allegations contained in paragraphs 50 and 51 of Plaintiffs' First Amended Complaint.

9. MONTEREY COUNTY denies that it has sufficient knowledge or information to form a belief as to the allegations contained in paragraph 52 of the First Amended Complaint and on this basis denies such allegations.

10. MONTEREY COUNTY admits the allegations contained in paragraph 53 of the First Amended Complaint.

11. MONTEREY COUNTY realleges paragraphs 1 through 53 above and incorporates the same as its answer and response to paragraph 54 of the First Amended Complaint.

12. MONTEREY COUNTY denies having sufficient knowledge or information to form a belief as to the allegations contained in paragraphs 55 through 59, inclusive, of Plaintiffs' First Amended Complaint, and on this basis denies such allegations.

13. In answering paragraph 60 of the First Amended Complaint, MONTEREY COUNTY realleges paragraphs 1 through 59 above and incorporates the same as its answer and response.

14. MONTEREY COUNTY denies having sufficient knowledge or information to form a belief as to the allegations contained in paragraphs 61 through 63, inclusive, of Plaintiffs' First Amended Complaint, and on this basis denies such allegations.

15. MONTEREY COUNTY as an affirmative defense, alleges that MONTEREY COUNTY is a political subdivision of the State of California, and the actions of MONTEREY COUNTY complained of in the First Amended Complaint were dependent upon affirmation, ratification, approval, or adoption by the State of California. In addition, the statutes of the State of California are binding and enforceable against MONTEREY COUNTY.

WHEREFORE, MONTEREY COUNTY respectfully prays that this Court enter judgment:

1. Denying the relief sought by the Plaintiffs;

2. Holding MC harmless for any damages or costs which may be assessed against MONTEREY COUNTY as a result of MONTEREY COUNTY's compliance with State laws; and

3. Granting such additional relief at law or equity as may be deemed appropriate.

DATED: November 25, 1996.

/s/ Douglas C. Holland
DOUGLAS C. HOLLAND,
County Counsel

Attorney for Defendant,
MONTEREY COUNTY,
CALIFORNIA

PROOF OF SERVICE

I am employed in the County of Monterey, State of California. I am over the age of 18 years and not a party to the within action. My business address is Courthouse, 240 Church Street, Room 214, Salinas, California.

On the date set forth below, I served a true copy of the following document(s):

DEFENDANT MONTEREY COUNTY, CALIFORNIA'S ANSWER TO FIRST AMENDED COMPLAINT

on the interested parties to said action by the following means:

[X] **(BY MAIL)** By placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, for collection and mailing on that date following ordinary business practices, in the United States Mail at the Office of the County Counsel, 240 Church Street, Room 214, Salinas, California, addressed as shown below. I am readily familiar with this business's practice for collection and processing of correspondence for mailing with the United States Postal Service, and in the ordinary course of business, correspondence would be deposited with the United States Postal Service the same day it was placed for collection and processing.

[ ] **(BY HAND DELIVERY)** By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] **(BY OVERNIGHT DELIVERY)** By placing a true copy thereof, enclosed in a sealed envelope, with delivery charges to be billed to the Office of the County Counsel, to be delivered by Express Mail, to the address(es) shown below.

[ ] **(BY FACSIMILE TRANSMISSION)** By transmitting a true copy thereof by facsimile transmission from facsimile number (408) 755-5283 to the interested parties to said action at the facsimile number(s) shown below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 25, 1996, at Salinas, California.

/s/ _____
Lisa Tarro

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[p. 8] [logo]

COURTS. SUPERIOR AND MUNICIPAL COURT CONSOLIDATION. LEGISLATIVE CONSTITUTIONAL AMENDMENT

Official Title and Summary Prepared by the Attorney General

COURTS. SUPERIOR AND MUNICIPAL COURT CONSOLIDATION. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

- Provides for consolidation of superior court and municipal court in county upon approval by majority of superior court judges and of municipal court judges in that county.
- Upon consolidation, the superior court has jurisdiction over all matters now handled by superior and municipal court, municipal court judges become superior court judges, and the municipal court is abolished.
- Makes related changes to constitutional provisions regarding municipal courts.
- Provides for addition of nonvoting members to Judicial Council and lengthens some members' terms.

Summary to Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Unknown net fiscal impact to the state from consolidation of superior and municipal courts. To the extent that most courts choose to consolidate, there would likely be annual net savings in the millions to tens of millions of dollars in the long term.

Final Votes Cast by the Legislature on SCA 4 (Proposition 220)

Assembly:	Senate:
Ayes 58	Ayes 38
Noes 1	Noes 0

[p. 9] Analysis by the Legislative Analyst

[logo]

Background

The California Constitution provides for superior and municipal courts, referred to as the state's "trial courts." Currently, the state and the counties pay for the operation of the trial courts. Recent changes in law require that the state pay for all future increases in operating costs, beginning on July 1, 1997.

Superior courts generally handle cases involving felonies, family law (for example, divorce cases), juvenile law, civil lawsuits involving more than $25,000, and appeals from municipal court decisions. Each of the state's counties has a superior court. Currently, there are 805 superior court judgeships.

Municipal courts generally handle misdemeanors and infractions and most civil lawsuits involving disputes of $25,000 or less. Counties are divided into municipal court districts based on population. Currently, there are 675 municipal court judgeships.

Current law requires trial courts to improve their operations in a variety of ways. For example, judges of either court may hear both superior and municipal court

cases and staff can be shared between the superior and municipal courts within a county.

Proposal

Trial Court Consolidation. This proposition, a constitutional amendment, permits superior and municipal courts within a county to consolidate their operations if approved by a majority of the superior court judges and a majority of municipal court judges in the county. If the judges approve consolidation of the courts, the municipal courts of the county would be abolished and all municipal court judges and employees would become superior court judges and employees.

A consolidated superior court would have jurisdiction in all matters that currently fall under the jurisdiction of either the superior or municipal courts. A consolidated superior court would have an appellate division to handle misdemeanors and infractions and most civil lawsuits involving disputes of $25,000 or less that are currently appealed from a municipal court to a superior court. The Legislature can change these amounts thereby changing the appeal jurisdiction.

Other Changes. The proposition makes a number of other related and conforming changes to the Constitution with respect to the minimum qualifications and election of judges in consolidated courts. In addition, the measure makes: (1) related and conforming changes to the membership of the Commission on Judicial Performance, which handles complaints against judges; and (2) related, conforming, and other minor changes to the membership

and terms of the California Judicial Council, which oversees and administers the state's courts.

Fiscal Effect

The fiscal impact of this measure on the state is unknown and would ultimately depend on the number of superior and municipal courts that choose to consolidate. To the extent that most courts choose to consolidate, however, this measure would likely result in net savings to the state ranging in the millions to the tens of millions of dollars annually in the long term. The state could save money from greater efficiency and flexibility in the assignment of trial court judges, reductions in the need to create new judgeships in the future to handle increasing workload, improved management of court records, and reductions in general court administrative costs. At the same time, however, courts that choose to consolidate would result in additional state costs from increasing the salaries and benefits of municipal court judges and employees to the levels of superior court judges and employees. These additional costs would partially offset the savings.

[p. 65] **Proposition 220: Text of Proposed Law**

This amendment proposed by Senate Constitutional Amendment 4 (Statutes of 1996, Resolution Chapter 36) expressly amends the Constitution by adding a section thereto and amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLES I AND VI

First – That Section 16 of Article I thereof is amended to read:

SEC. 16. Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes ~~in municipal or justice court~~ *other than causes within the appellate jurisdiction of the court of appeal* the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.

Second – That Section 1 of Article VI thereof is amended to read:

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, and municipal courts. ~~All courts~~, *all of which* are courts of record.

Third – That Section 4 of Article VI thereof is amended to read:

SEC. 4. In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

~~The county clerk is ex officio clerk of the superior court in the county.~~

In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.

Fourth – That Section 5 of Article VI thereof is amended to read:

SEC. 5. (a) Each county shall be divided into municipal court districts as provided by statute, but a city may not be divided into more than one district. Each municipal court shall have one or more judges. Each municipal court district shall have no fewer than 40,000 residents; provided that each county shall have at least one municipal court district. The number of residents shall be determined as provided by statute.

(b) On the operative date of this subdivision, all existing justice courts shall become municipal courts, and the number, qualifications, and compensation of judges, officers, attachés, and employees shall continue until changed by the Legislature. Each judge of a part-time municipal court is deemed to have agreed to serve full

time and shall be available for assignment [p. 66] by the Chief Justice for the balance of time necessary to comprise a full-time workload.

(c) The Legislature shall provide for the organization and prescribe the jurisdiction of municipal courts. It shall prescribe for each municipal court the number, qualifications, and compensation of judges, officers, and employees.

(d) Notwithstanding subdivision (a), any city in San Diego County may be divided into more than one municipal court district if the Legislature determines that unusual geographic conditions warrant such division.

(e) Notwithstanding subdivision (a), the municipal and superior courts shall be unified upon a majority vote of superior court judges and a majority vote of municipal court judges within the county. In those counties, there shall be only a superior court.

Fifth – That Section 6 of Article VI thereof is amended to read:

SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, ~~and~~ 5 judges of municipal courts, 2 *nonvoting court administrators, and such other nonvoting members as determined by the voting membership of the council,* each appointed by the Chief Justice for a ~~2-year~~ *3-year* term *pursuant to procedures established by the council;* 4 members of the State Bar appointed by its governing body for ~~2-year~~ *3-year* terms; and one member of each house of the Legislature appointed as provided by the house. *Vacancies in the*

memberships on the Judicial Council otherwise designated for municipal court judges shall be filled by judges of the superior court in the case of appointments made when fewer than 10 counties have municipal courts.

Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, ~~not inconsistent with statute~~; and perform other functions prescribed by statute. *The rules adopted shall not be inconsistent with statute.*

The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

Judges shall report to the ~~Judicial Council~~ *council* as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned.

Sixth – That Section 8 of Article VI thereof is amended to read:

SEC. 8. (a) The Commission on Judicial Performance consists of one judge of a court of appeal, one judge of a superior court, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, each appointed by the Governor; and 6 citizens who are not judges, retired judges, or members of the State Bar of California, 2 of whom shall be appointed by the Governor, 2 by the Senate Committee on Rules, and 2 by the Speaker of the Assembly. Except as provided in ~~subdivision~~ *subdivisions (b) and (c)*, all terms are for 4 years. No member shall serve more than 2 4-year terms, or for more than a total of 10 years if appointed to fill a vacancy. *A vacancy in the membership on the Commission on Judicial Performance otherwise designated for a municipal court judge shall be filled by a judge of the superior court in the case of an appointment made when fewer than 10 counties have municipal courts.*

(b) Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power. Appointing powers may appoint members who are

already serving on the commission prior to March 1, 1995, to a single 2-year term, but may not appoint them to an additional term thereafter.

~~(b)~~

(c) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

(1) Two members appointed by the Supreme Court to a term commencing March 1, 1995, shall each serve a term of 2 years and may be reappointed to one full term.

(2) One attorney appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(3) One citizen member appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(4) One member appointed by Senate Committee on Rules to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(5) One member appointed by the Speaker of the Assembly to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(6) All other members shall be appointed to full 4-year terms commencing March 1, 1995.

Seventh – That Section 10 of Article VI thereof is amended to read:

SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. *The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.*

Superior courts have original jurisdiction in all *other* causes except those given by statute to other trial courts.

The court may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause.

Eighth – That Section 11 of Article VI thereof is amended to read:

SEC. 11. *(a)* The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction *in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995,* and in other causes prescribed by statute. *When appellate jurisdiction in civil causes is determined by the amount in controversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.*

~~Superior Courts have~~

(b) Except as provided in subdivision (a), the appellate division of the superior court has appellate jurisdiction in

causes prescribed by statute ~~that arise in municipal courts in their counties~~.

(c) The Legislature may permit ~~appellate~~ courts *exercising appellate jurisdiction* to take evidence and make findings of fact when jury trial is waived or not a matter of right.

Ninth – That Section 16 of Article VI thereof is amended to read:

SEC. 16. (a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to [p. 69] an unexpired term serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.

~~(b) Judges of other~~

(b)(1) In counties in which there is no municipal court, judges of superior courts shall be elected in their counties at general elections except as otherwise necessary to meet the requirements of federal law. In the latter case the Legislature, by two-thirds vote of the membership of each house thereof, with the advice of judges within the affected court, may provide for their election by the system prescribed in subdivision (d), or by any other arrangement. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(2) In counties in which there is one or more municipal court districts, judges of superior and municipal courts shall

be elected in their counties or districts at general elections. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(c) Terms of judges of superior courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the *second* January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.

(d) Within 30 days before August 16 preceding the expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected.

The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts.

Tenth – That Section 23 is added to Article VI thereof, to read:

SEC. 23. (a) The purpose of the amendments to Sections 1, 4, 5, 6, 8, 10, 11, and 16, of this article, and the amendments to Section 16 of Article I, approved at the June 2, 1998, primary election is to permit the Legislature to provide for the abolition of the municipal courts and unify their operations within the superior courts. Notwithstanding Section 8 of Article IV, the implementation of, and orderly transition under, the provisions of the measure adding this section may include urgency statutes that create or abolish offices or change the salaries, terms, or duties of offices, or grant franchises or special privileges, or create vested rights or interests, where otherwise permitted under this Constitution.

(b) When the superior and municipal courts within a county are unified, the judgeships in each municipal court in that county are abolished and the previously selected municipal court judges shall become judges of the superior court in that county. The term of office of a previously selected municipal court judge is not affected by taking office as a judge of the superior court. The 10-year membership or service requirement of Section 15 does not apply to a previously selected municipal court judge. Pursuant to Section 6, the Judicial Council may prescribe appropriate education and training for judges with regard to trial court unification.

(c) Except as provided by statute to the contrary, in any county in which the superior and municipal courts become

unified, the following shall occur automatically in each preexisting superior and municipal court:

(1) Previously selected officers, employees, and other personnel who serve the court become the officers and employees of the superior court.

(2) Preexisting court locations are retained as superior court locations.

(3) Preexisting court records become records of the superior court.

(4) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(5) Matters of a type previously within the appellate jurisdiction of the superior court remain within the jurisdiction of the appellate division of the superior court.

(6) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter.

(7) Penal Code Procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order.

Eleventh – That if any provision of this measure or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this measure that can be given effect without the

invalid provision or application, and to this end the provisions of this measure are severable.
